IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.281 OF 2006

IN

NOTICE OF MOTION NO.1832 OF 2000

IN

S.C.SUIT NO.2061 OF 2000

WITH

CIVIL APPLICATION NO.366 OF 2006

Mohammed Ishaque Abbasali Birajdar ...Appellant

Versus

Ashfaqulhaq Haque Khan & Ors. ...Respondents

.....

Mr.M.I.Sethna, Sr.Counsel with Mr.J.B.Mishra for Appellant.

Respondent No.2 is persent in Court.

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**CORAM: A.M.KHANWILKAR, J.**

**MAY 5, 2006.**

**P.C.**

1. Heard Counsel for the Appellant.

2. It is seen that the present Appeal arises from order passed by the Trial Court on Notice of

Motion No.1832 of 2000 in S.C.Suit No.2061 of 2000. The said Suit has been filed for relief under Section 6 of the Specific Relief Act. Obviously, against order passed in such proceedings, no appeal is available by virtue of Section 6(3) of the Act.

3. Counsel for the Appellant, however, submits that the order which is challenged in this Appeal is passed on Notice of Motion which was filed under Order XXXIX of the Code of Civil Procedure. This submission does not commend to me. The fact remains that the order in question has been passed in proceedings under Section 6 of the Specific Relief Act, though an interlocutory order. If it is so, by virtue of Section 6(3) of the Act, no Appeal is available.

4. Counsel for the Appellant seeks liberty to withdraw this Appeal, so that, the Appellant can pursue appropriate remedy as may be advised. Hence, this Appeal is dismissed as withdrawn with liberty to the Appellant to pursue appropriate remedy against the impugned Judgment, if so advised.

A.M.KHANWILKAR, J.